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POLYGRAPHS: TRUE OR FALSE?

Part 1 of a 2-Part Series

Proposed Lie-Detector Ban Splits Business Community

By Morton Mintz
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Sweeping legislation that would prohibit most private employers from using polygraphs or any other kind of so-called lie detectors appears headed for congressional passage, carried along by strong bipartisan support.

Although the bill has encountered some opposition from employers who favor using the tests, the business community is sharply divided about the highly controversial devices—a rift that increases the bill's chances of passage.

On the House side, a bill sponsored by Rep. Pat Williams (D-Mont.), chairman of the House Education and Labor subcommittee on employment opportunities, has been approved by the subcommittee and the full committee without dissent.

On the Senate side, two powerful sponsors who often are adversaries, Senate Labor and Human Resources Committee Chairman Orrin G. Hatch (R-Utah) and ranking Democrat Sen. Edward M. Kennedy (D-Mass.), are backing the bill.

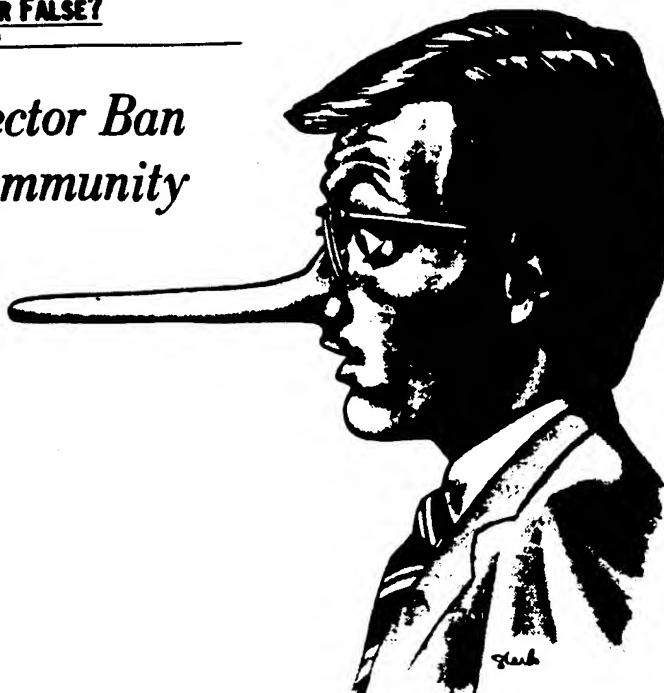
Some business interests, including the Jewelers of America, the Association of General Merchandise Chains, the U.S. Chamber of Commerce and some drugstore chains, fiercely oppose the legislation.

No major corporation has taken a leadership role in support of the legislation. But many of them, including International Business Machines Corp., never use polygraphs, even where state laws permit the machines and union contracts do not bar them. Other companies, including such major employers as the top national fast-food chains and Safeway Stores Inc., seldom or rarely use polygraphs—and then only for investigations of thefts or other offenses.

Still others who oppose the proposed legislation use the devices for investigations and for pre-employment screening—by far the most hotly disputed use of the ma-

chines. Corporations that favor using the machines say the devices are critical to efforts to protect against employee dishonesty.

Zale Corp., a leading owner of jewelry stores, supported their use in a statement presented at a hearing on the proposed legislation. "It is the policy of Zale Corp. to polygraph all of its employees who occu-



BY GAHAN WILSON FOR THE WASHINGTON POST

py sensitive positions, [including the] chairman of the board . . ." the statement said. "We feel that, as a result of the availability and use of the polygraph, the Zale Corp. was able to recover money and merchandise during the past four years valued at just under \$2 million."

Polygraph use has been an issue on Capitol Hill for more than 20 years. During that time, a strongly bipartisan base of support for restrictions has been growing, nurtured by a 1983 Office of Technology Assessment research review and evaluation and by the AFL-CIO, mainly through its Food & Allied Service Trades Department, which has lobbied against the devices.

At the heart of the debate is the question of how accurate and reliable the devices are, particularly when used in pre-employment screening. The OTA report concluded that, "While there is some evidence for the validity of polygraph testing as an adjunct to criminal investigations, there is very little research or scientific evidence to establish polygraph-test validity in screening situations, whether they be pre-employment, pre-clearance, periodic or aperiodic, random, or 'dragnet.'"

Citing an OTA estimate of a 5

percent rate of error in analysis of test results, Senate sponsor Hatch said that, "Even under the best of circumstances, some 50,000 workers may have their employment opportunities terminated, curtailed or blocked each year, due not to their own work record, but due to employer reliance on the results of invalid polygraph tests."

Not everyone shares that assessment of the tests' accuracy. Lawrence W. Talley, vice president for risk management for Days Inn, a motel chain that uses the devices, said recently "there are absolutely hundreds of tests to show that the polygraph is a reliable instrument."

The proposed Employee Polygraph Protection Act of 1985 would make it unlawful for an employer "to require, request, suggest or cause any employee or prospective employee to take or submit to any lie detector test." Forbidden tests are defined to include those done with a voice-stress analyzer or any other device—mechanical, electrical or chemical—"for the purpose of detecting deception or verifying the truth of statements."

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The bill, as passed by the House subcommittee and introduced in the Senate, has exemptions for only three categories: all governmental employers, CIA and National Security Agency counterintelligence activities, and FBI counterintelligence contractors.

When the full committee passed the bill on Oct. 23, it added a narrow exemption for investigations of thefts or illicit diversions of federally regulated drugs with a potential for abuse. Employers making such investigations—mostly drug manufacturers and wholesalers and retail pharmacies—could give polygraph tests to employees, but only to those who had "direct access" to the so-called controlled substances.

According to Williams, "Polygraphs have become vehicles for employee intimidation, and for screening out employees of political or union beliefs different from those of a particular manager." He added that, in most work places, "Employers can polygraph workers for any reason: to verify employment applications, for periodic surveys of employee honesty, to find out why merchandise is missing or, perhaps, just for intimidation."

Williams said in an interview that he expects the House to pass the bill this month "with a considerable majority."

Williams has 164 co-sponsors, including 20 Republicans. One is Rep. Jack Kemp (N.Y.), a presidential candidate who said he is "proud" to be an original backer. "The time has come to proscribe these inaccurate devices from the work place," he said in a June "Dear Colleague" letter urging fellow Republicans to back the bill.

In the key Senate Labor and Human Resources Committee, meanwhile, Chairman Hatch and top ranking Democrat Kennedy quietly reached a surprise agreement to co-sponsor the Williams bill in the Senate.

Hatch, introducing his bill Nov. 1, nine days after House Labor acted, said research has shown "that even the most respected and reputable polygraphers make mistakes . . . which can unjustly condemn and stigmatize an individual for life, rob him of his livelihood or bar him from just advancement."

"The Hatch-Kennedy combination will make the bill extremely difficult to stop" in the Senate, Williams said. But a leading opponent, Richard L. Lesher, president of the Chamber of Commerce of the United States, has predicted that it will be stopped "before this is all over."

"I just can't see passing more legislation to protect criminals and drug-pushers," Lesher said on "It's Your Business" earlier this month. The Chamber of Commerce television program was taped before the introduction of the Hatch-Kennedy bill.

Problems such as "getting drugs off the street" and trying to protect "the future of our children," including those in day care centers, "are just as important as national security issues," Lesher said, adding that polygraph tests in the work place could assist in accomplishing those aims. The chamber favors polygraphing "the executive work force" as well as rank-and-file employees, he said.

Currently, seven states prohibit any use of polygraphs in private employment. In varying ways, 19 other states and the District of Columbia make it illegal for a private employer to require or request polygraphing.

Polygraph tests generally are not admissible as evidence in criminal trials. "How ironic that we protect criminals from these devices, yet subject hundreds of thousands of innocent workers to these devices," Kemp said in urging support for the House bill. "It is time that we extend the same basic protection to workers which we offer hardened criminals."

Many companies have decided on their own not to use polygraphs. IBM told the Senate Judiciary subcommittee on the Constitution in 1978 that it "does not and has not used polygraph or similar types of equipment. . . . IBM is committed to respecting the dignity of its employees, and the way in which the company handles information about them is a part of that basic respect." IBM has not changed its position in the ensuing seven years, a spokesman said recently.

The now-defunct Privacy Protection Study Commission heard testimony about polygraphs from 12 major employers, including Equitable Life Assurance Society of the U.S., General Electric, IBM, Inland Steel Co. Inc., J. C. Penney Co., Ford Motor Co., Manufacturers Hanover Trust Co., Exxon Corp., E. I. du Pont de Nemours Inc. and Rockwell International Corp. The commission also received written statements from, or interviews with, a number of other employers, including General Motors Corp., Procter & Gamble Co. and Abbott Laboratories.

None of the 12 "used polygraphs in pre-employment screening of job applicants, or regularly administered the polygraph or any similar truth-verifications test to its employees," Chairman David F. Liebowes told the Senate subcommittee in 1978.

Other companies use the machines only for special purposes such as investigations, rejecting their routine use in pre-employment screening. Members of this group include at least three large corporations that own and franchise a combined total of nearly 15,000 McDonald's, Pizza Hut and Burger King fast-food outlets; Safeway, the largest supermarket chain; Holiday Corp., which owns and franchises Holiday Inns and also owns Harrah's casinos, and Montgomery Ward.

All of the fast-food firms said their polygraph policies are mandatory for corporate-owned outlets, but voluntary for their franchisees. These independent business operators are encouraged to, and do, follow the corporate policies voluntarily, spokesmen said.

McDonald's Corp.'s "policy is that we do not use polygraphs for pre-employment screening," spokesman Terri Capatosto said. "We prefer to rely on the integrity of our people. . . . I know of no franchisees that are using polygraphs. In particular, they like to develop a family-type atmosphere among their employees, and they put their faith in their people." McDonald's has about 6,700 U.S. outlets and owns about one-quarter of them.

Pizza Hut's policy is the policy of its owner, PepsiCo Inc., which, with 110,000 employees, is the country's 11th-largest private employer. That policy is: no polygraphing of job applicants.

"The reason we don't give [pre-employment polygraph tests] is that there's no evidence that they are either valid or useful for this purpose," said PepsiCo Public Affairs Director James M. Griffith. "And there's also the perception that the tests can be misused."

He added, "We can't dictate to franchisees, but as far as we know, if polygraphs are used, it's on a rare occasion. . . . Virtually everyone follows our lead."

Griffith said his inquiries turned up no one who knew of polygraph use by Pizza Hut. Pizza Hut owns about 2,000 outlets and franchises about the same number.

Burger King has "not used, [and] [does] not intend to use in the future, polygraphs as a pre-employment screening tool," said Joyce Meyers, a spokesman for Pillsbury Co., the owner. She added that Burger King "apparently never [has] considered using them." Burger King has more than 4,000 outlets, of which Pillsbury owns about 800.

Safeway's "corporate policy is to not use the polygraph as a pre-screening device when we're hiring," said public relations manager Felicia del Campo. "We feel there is no proof that the polygraph works for this purpose...."

"We don't have a corporate policy on using polygraphs in investigations," del Campo continued. "However, retail divisions in states which permit their use do sometimes offer a polygraph test to employees suspected of theft when a large loss is involved. But it's not mandated, and we don't use it regularly or to any great extent." Safeway has about 2,000 U.S. stores.

"Holiday Inns does not use a polygraph except in investigations where permissible by law," Holiday Corp. Communications Director David G. Daly said. "It is used with the employee's permission only, as an aid or tool, but never as evidence, and never as the only tool. In none of our properties is it used for pre-employment screening." There are 1,500 U.S. Holiday Inns, including 170 that are company-owned.

Holiday Corp. also owns a Harrah's casino in New Jersey, which does not permit polygraphing, and a Harrah's in Nevada, which does allow it. "Neither East nor West Harrah's uses a polygraph for pre-employment screening," Daly said.

Many companies do use the machines for a variety of purposes, including screening would-be employees. These include members of the National Wholesale Druggists Association, the National Association of Chain Drug Stores Inc. and the National Association of Retail Druggists. Those associations take a position on polygraph exams shared by the federal Drug Enforcement Administration.



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Ronald W. Buzzeo, DEA's deputy administrator for diversion control, says that the agency supports polygraph use "for pre-employment screening and as a subsequent investigatory tool in appropriate [controlled-substance] cases, provided that it is permitted by state and local laws."

People's Drug Stores Inc. Chairman Sheldon W. Fantic said that the nationwide, 835-store chain uses polygraphs to control drug diversions and thefts. Polygraphing should be "at the discretion of the employer," he said. He termed the House bill "a weak recognition" of the need, and said it will "not get the job done."

Jewelers of America, an organization of 12,000 retail jewelers, and Manufacturing Jewelers and Silversmiths of America, which has 2,400 members, told the House subcommittee hearing that a ban on private-sector use of polygraphs "would have a devastating impact on the jewelry industry."

The machine "is not infallible, [but] it has been my experience, and that of many other jewelers, that it is the most accurate and efficient means of confirming information included on an employment application," spokesman Larry Sherwood said.

Security consultant William L. Cole of Borg-Warner Corp., owner of Wells Fargo Armored Service Corp., Wells Fargo Guard Services and Burns International Security Services, has raised this question: "If the U.S. government, states and municipalities have the right to use polygraph testing to protect themselves from dishonest employees, why should the security industry as well as other employers not have access to the same technology and protection?"

*Monday in Washington Business:
The Washington-area polygraphy
story.*